W. TED HACKETT

IBLA 78-617 Decided January 11, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, declaring the Three C's Nos. 1-4 and the Crow Creek High Channel No. 1 placer mining claims null and void ab initio. AA 13707-13711.

Affirmed as modified.

1. Mining Claims: Lands Subject to--Segregation: Generally

   A mining claim located on land at a time when the land is segregated from mining location by a State selection application is properly declared null and void ab initio.

2. Mining Claims: Determination of Validity--Mining Claims: Lands Subject to--Mining Claims: Location

   A mining claim located on land which is not subject to mineral entry at the time of location is null and void from its inception.

APPEARANCES: W. Ted Hackett, pro se. 1/

1/ The notice of appeal in this case purports to be by W. Ted Hackett, Angelo S. Lynn, and Brian P. Canaiy. However, it is endorsed only by Hackett. Similarly, the statement of reasons filed in support of this appeal is endorsed only by Hackett. Hackett has not alleged that he is authorized to practice before this Board on behalf of Lynn and Canaiy, under 43 CFR 1.2(c) and 1.3, and there is nothing in the record showing that Hackett meets any of the qualifications of 43 CFR 1.3(b). See United States v. Hunter, 22 IBLA 28, 29 (1975); United States v. Smith, 14 IBLA 309 (1974); 54 Am. Jur. 2d Mines and Minerals §§ 151-52, 164 (1971). In any event, however, the claims are null and void for the reasons stated in this decision.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

W. Ted Hackett has appealed from the July 24, 1978, decision of the Alaska State Office, Bureau of Land Management (BLM), declaring five placer mining claims, Three C's Nos. 1-4 and Crow Creek High Channel No. 1, null and void ab initio in part. BLM held that most of the lands on which these claims are located is subject to an application, AA-6060, filed October 22, 1970, by the Forest Service, requesting withdrawal thereof for use as a recreational area. BLM concluded that, as the Forest Service's request was duly noted on official plats on November 10, 1970, the lands affected by this request were not open to location under the mining laws at the time these claims were located, and that, therefore, "[a]ny portions of [these] claims which fall within this withdrawal, AA-6060, are * * * null and void ab initio."

In the memorandum transmitting this appeal BLM has notified this Board that the lands on which these claims are located were also segregated by applications for selection by the State of Alaska (the State), A-063695 and A-067451. BLM has enclosed the case files for these applications. On June 20, 1976, appellant located these claims on land which was previously part of a group of claims originally located prior to 1906 and included in Mineral Survey 748, situated entirely within sec. 34, T. 11 N., R. 2 E., and the contiguous sec. 3, T. 10 N., R. 2 E., 2 E., Seward meridian, Alaska. On March 10, 1966, and June 16, 1972, respectively, the State applied to select all of section 34 and section 3 pursuant to the Act of July 7, 1958 (72 Stat. 339-343), as amended. These State selection applications were given serial numbers A-063695 and A-067451. 2/ Thus, prior to appellant's new locations in 1976, all of the lands claimed were either included in the withdrawal application or one of the State selections.

[1, 2] Under 43 CFR 2091.6-4 and 2627.4(b), the selection of these sections by the State in 1966 and 1972 segregated them from all appropriations based upon location, including location under the mining laws. It is established that mining claims located on lands which, at the time of location, are segregated from location under the mining laws are null and void ab initio. Wilbur G. Hallaver, 36 IBLA 144 (1978); Janelle R. Deeter, 34 IBLA 81 (1978); Mark W. Boone,

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2/ State selection application A-067451 was originally filed by the State on October 4, 1965, but was limited to four lots in T. 10 N., R. 2E., Seward meridian, totalling 13.595 acres and not including the lands on which appellant located his claims. On June 16, 1972, the State amended this application to include all unpatented lands in this township, including the lands in question here.

33 IBLA 32 (1977); Leo J. Kottas, 73 I.D. 123 (1966), aff'd sub nom. Lutzenheiser v. Udall, 432 F.2d 328 (9th Cir. 1970).

Nevertheless, appellant might prevail if he could show that he is a successor to an interest in valid mining claims located on these lands before their segregation. Janelle R. Deeter, supra at 83. Appellant has submitted an "Abstract of the History" of the subject claims purportedly showing them to have been valid and recognized claims before the land was closed to the location of mining claims. This abstract alleges that the claims were originally located in 1906. Appellant thus suggests that his claims predate both the request for withdrawal in 1970, and the segregation of the lands by the State selections in 1966 and 1972 as well.

However, appellant has not shown either that he is the successor to these earlier claims or that they were valid. In fact, appellant admits in his abstract that there was no assessment work done on any of these earlier claims from 1966 until their "relocation" by him in June 1976. 3/ As appellant did not succeed to title to valid claims which predated the segregation of the lands from mineral entry in 1966 and 1972, and as his locations were made only in 1976, after the lands were segregated from the operation of the mining law, these claims were null and void ab initio. Janelle R. Deeter, supra.

BLM held that the lands on which appellant located these claims in June 1976 were segregated in part by the Forest Service's application for withdrawal, AA-6060, on October 22, 1970, and that the claims were therefore null and void ab initio in part. This was correct, as far as it went. However, all of these lands were segregated from appropriations based upon location, including locations under the mining laws, on March 10, 1966, and June 16, 1972, by State selection applications A-063695 and A-067451. Therefore, BLM's decision is hereby modified so as to declare the Three C's Nos. 1-4 and Crow Creek High Channel No. 1 placer mining claims null and void ab initio in toto.

3/ Appellant styled his activity in June 1976 a "relocation" of the claims in Mineral Survey 748. Regardless of whether appellant's claims are more accurately characterized as "relocations" or "new locations," the result is the same, as he was not the locator of the original claims or, apparently, the successor of the original locator(s), and thus had no "valid existing right" which could be preserved from the effect of the closure of the land to mineral entry. Claims "relocated" at a time when lands are segregated from mineral entry are null and void ab initio. Wilbur G. Hallaver, supra at 146-7; Lyman R. Crunk, 68 I.D. 190 (1961).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

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Edward W. Stuebing
Administrative Judge

We concur:

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Joseph W. Goss
Administrative Judge

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Joan B. Thompson
Administrative Judge